

PROGRAM MEMO

Program Memo: Title 390, Protection and Safety # 12-2005

To: Holders of Title 390

From: Todd Reckling, Administrator
Office of Protection and Safety

Signed by _____, Director
Department of Health and Human Services

Date

RE: National Criminal History Background Checks for Contracted Providers

Effective Date: October 7, 2005

Duration: Until revised regulation is issued.

Contact Person: If you have any questions about this program memo, please contact
Becky Henderson, Office of Protection and Safety, (402) 471-9333.

FBI regulations allow sharing of National Criminal History Check results only with governmental agencies. These regulations prohibit governmental agencies from sharing the results with other individuals or entities.

Failure to comply with FBI regulations places the Department at risk of losing the ability to obtain National Criminal History Background Checks.

Purpose: The purpose of this program memo is to clarify the Department's procedure for following these regulations.

The Department of Health and Human Services cannot communicate the results of National Criminal History Checks to anyone outside of the Department. This prohibition precludes sharing with the subject of the check or with persons or agencies performing functions on the Department's behalf. For example, the Department cannot share results of the Check with Agency Based Foster Care contractors, or home study contractors.

Categories of Criminal History: The Department is allowed to share only whether or not there is a criminal history, and the general category into which the offense falls. The categories are:

Category "A": Criminal History that shows a current charge, indictment, or conviction of any of the following crimes:

1. Aggravated or armed robbery;
2. Arson;
3. Assault, first or second degree;
4. Child abandonment;
5. Child abuse;
6. Child molestation or debauching a minor;
7. Child neglect;
8. Commercial sexual exploitation of a minor;
9. Criminal non-support;
10. Domestic violence;
11. Exploitation of a minor involving drug offenses;
12. Felony controlled substances offenses;
13. Felony violation of custody;
14. Incest;
15. Kidnapping;
16. Murder, first or second degree;
17. Robbery;
18. Sexual abuse of a minor;
19. Sexual assault;
20. Sexual exploitation of a minor, including child pornography;
21. Voluntary manslaughter; or

Category "B": Criminal history that shows a conviction in the last five years of any of the following crimes:

1. Burglary;
2. Driving under the influence;
3. Misdemeanor controlled substances offenses;
4. Misdemeanor contributing to the delinquency of a child; or

Category "C": Criminal history that is not included in either of the above.

Procedure: In order to carry out the functions required by statute and regulation, the following procedures must be used for processing results of National Criminal History Background Checks.

Protection and Safety Central Office staff will continue to receive all National Criminal History reports from the NE State Patrol. Central Office will review each National Criminal History report (FBI report) and determine the category that each offense corresponds to.

If no criminal history is reported, Central Office will stamp, initial and date on the State Patrol Check the following, "This information has been added by the Department of Health and Human Services. The National Criminal History report for this individual indicates "No Record."

If there is a record, Central Office will complete the form the "Results of National Criminal History Background Check." In all cases, Central Office will send a copy of the form and the FBI report to the service area's designated contact person. If the contact person listed on the fingerprint form is an employee of an agency performing licensing functions for HHS (i.e. Agency Based Foster Care provider), Central Office will also send

a copy of the form “Results of National Criminal History Background Check” to this person.

If the Home Study is being completed by a contractor (rather than a HHS or ICCU staff person), the service area may share the “Results of National Criminal History Background Check” form with the contractor. HHS or ICCU cannot share the FBI’s report.

Following completion of the Home Study or licensing activity by a private contractor or ABFC agency, the service area is responsible to review the materials to assure that all crimes in the FBI report have been discussed and that the Department’s action regarding licensing or approval of the applicant is appropriate.

Sharing Information with the Applicant: The Department employee, Agency, or Home Study contractor must not tell the Applicant the results of his/her National Criminal History Check, except to say that his/her criminal history includes a crime or crimes from Category “A”, “B”, or “C”, or that the results of the National Criminal History Check showed no criminal history. The Department employee, Agency, or Home Study contractor can share the completed “Results of National Criminal History Background Check” form.

Sharing Information with Attorneys or Courts: The Department can share the “Results of National Criminal History Background Check” form with attorneys and courts. The prohibition against sharing the actual results applies even to these entities. If there are questions about how to proceed with such requests, the Department’s Legal Team must be contacted for assistance.

Sharing Information in ICPC Home Studies: The Department will not share the actual results as part of the ICPC home study. Instead, the Department will include the completed “Results of National Criminal History Background Check” form. If necessary, the worker can include a copy of this memo as an explanation to the other state.

APPLICATION FOR A FOSTER CARE LICENSE: If the applicant has applied for a foster care license and the criminal offense is from category “A” “B” or “C” the following action will be taken by the Department employee.

Category “A” or “B” Criminal History: If the criminal offense is from Category “A” or Category “B” the Department employee must explain to the applicant that the criminal record prohibits him/her from being licensed for foster care.

Category “C” Criminal History: If the offense is from Category “C”, the Department employee must give the applicant an opportunity to self-disclose about his/her criminal record, and advise the applicant that the information provided will be taken into consideration in making the decision about licensure.

APPLICATION FOR APPROVAL ONLY: If the applicant has applied to be “approved” the Department employee must give the applicant an opportunity to self-disclose about his/her criminal record and advise the applicant that the information provided will be taken into consideration in making a decision about approval.

The applicant will be encouraged by Department staff to self-disclose about the offense(s). Unwillingness of the applicant to be forthcoming about the offense may be used as the basis for denying the license or approval. The Resource Development or Protection and Safety Supervisor (whichever is appropriate) must be involved in the decision to deny licensure or approval based on the applicant's failure to self-disclose. If the applicant tells the worker that the Department's information from the national check is incorrect, the worker should refer the applicant to Chris Price of the NE State Patrol, (402) 479-4924. Chris can advise the applicant about the process to "challenge" the information in the FBI's information system.

For further information regarding approvals see Program Memo #2-2004, dated September 16, 2004 entitled, Initial and Emergency Placement Approval.

PLACEMENT OF NATIONAL CRIMINAL HISTORY CHECK RESULTS IN THE DEPARTMENT FILE

The Department is prohibited from sharing results of a national criminal history check with any non-governmental agency. Therefore, the results must be filed in an Appendix to the Resource Development file. This Appendix to the fill will be only accessible for:

1. The purposes of foster care (including adoption) licensing and approval; and
2. To Department staff and ICCU staff.

As stated above, when the form entitled "Results of National Criminal History Background Check" has been completed and shared with persons or agencies outside of the Department, a copy of the completed form must be filed in the Resource Development file.

SHARING OF LOCAL AND STATE LEVEL CRIMINAL HISTORY BACKGROUND INFORMATION: The Department's ability to provide or share results or information that is obtained from a local or state criminal background check does not change with the above described procedures.

For Example: The state level (Nebraska State Patrol) criminal history report is returned with a "hit" of a felony drug conviction in 2000. The National criminal history check report is returned with that same "hit". The Department may tell a contracted provider and/or the applicant that there was a "hit" on the state check and may share the information about the offense and the date of the occurrence. The contracted provider in turn can share this information with the applicant. The Department may share the "category" information with a contracted provider or applicant but must not tell the contracted provider or applicant that the national background "hit" is the same one.